

25.600

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not covered by the WTO GPA. The evaluated price of Offer C, Item 1, becomes \$53,000 (\$50,000 plus 6 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is \$10,600 (\$10,000 plus 6

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percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of \$82,000.

(b) *Example 2.*

Item	Offers		
	A	B	C
1	DO = \$50,000	EL = \$50,500	NEL = \$50,000
2	NEL = 10,300	NEL = 10,000	EL = 10,200
3	EL = 20,400	EL = 21,000	NEL = 20,200
4	DO = 10,500	DO = 10,300	DO = 10,400
	91,200	91,800	90,800

Problem: The solicitation specifies award on a group basis. Assume the Buy American statute applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the offers are domestic (see 25.503(c)(1)):

	Domestic [percent]	Determination
A	60,500/91,200 = 66.3%	Domestic
B	10,300/91,800 = 11.2%	Foreign
C	10,400/90,800 = 11.5%	Foreign

STEP 2: Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)):

	Domestic + eligible [percent]	Determination
A	N/A	Domestic
B	81,800/91,800 = 89.1%	Eligible
C	20,600/90,800 = 22.7%	Noneligible

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business) to Offer C yields an evaluated price of \$96,248 (\$90,800 + 6 percent). Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see 25.502(c)(3)).

[64 FR 72419, Dec. 27, 1999; 65 FR 4633, Jan. 31, 2000; 69 FR 77875, Dec. 28, 2004; 79 FR 24209, Apr. 29, 2014]

Subpart 25.6— American Recovery and Reinvestment Act— Buy American Statute—Construction Materials

SOURCE: 74 FR 14626, Mar. 31, 2009, unless otherwise noted.

25.600 Scope of subpart.

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) with regard to manufactured construction material and 41 U.S.C. chapter 83, Buy American (referred to in this subpart as the Buy American statute) with regard to unmanufactured construction material. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

[75 FR 53165, Aug. 30, 2010, as amended at 79 FR 24209, Apr. 29, 2014]

25.601 Definitions.

As used in this subpart—

Domestic construction material means the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel

was produced in the United States. (Section 1605 of the Recovery Act applies.)

Foreign construction material means a construction material other than a domestic construction material.

Manufactured construction material means any construction material that is not unmanufactured construction material.

Public building or public work means a building or work, the construction, prosecution, completion, or repair of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency (see 22.401). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Recovery Act designated country means a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, or a least developed country.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

[74 FR 14626, Mar. 31, 2009, as amended at 75 FR 53165, Aug. 30, 2010; 79 FR 24209, Apr. 29, 2014]

25.602 Policy.

25.602-1 Section 1605 of the Recovery Act.

Except as provided in 25.603—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless the public building or public work is located in the United States and—

(1) All of the iron, steel, and manufactured goods used as construction material in the project are produced or manufactured in the United States.

(i) All manufactured construction material must be manufactured in the United States.

(ii) *Iron or steel components.* (A) Iron or steel components of construction material consisting wholly or predominantly of iron or steel must be produced in the United States. This does not restrict the origin of the elements of the iron or steel, but requires that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives.

(B) The requirement in paragraph (a)(1)(ii)(A) of this section does not apply to iron or steel components or subcomponents in construction material that does not consist wholly or predominantly of iron or steel.

(iii) *All other components.* There is no restriction on the origin or place of production or manufacture of components or subcomponents that do not consist of iron or steel.

(iv) *Examples.* (A) If a steel guardrail consists predominantly of steel, even though coated with aluminum, then the steel would be subject to the section 1605 restriction requiring that all stages of production of the steel occur in the United States, in addition to the requirement to manufacture the guardrail in the United States. There would be no restrictions on the other components of the guardrail.

(B) If a wooden window frame is delivered to the site as a single construction material, there is no restriction on any of the components, including the steel lock on the window frame; or

(2) If trade agreements apply, the manufactured construction material shall either comply with the requirements of paragraph (a)(1) of this subsection, or be wholly the product of or